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Gibby Novelties, LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PAUL MONTWILLO, an individual	)	CASE NO. C 07 3947 SI
)	
Plaintiff,	)	Declaration of David Y. Wong in Support of
	)	Opposition to Plaintiff's Motion for Summary
vs.	)	Judgment
	)	(FRCP RULE 56(C))
WILLIAM TULL; DANIEL GIBBY;)	
GIBBY NOVELTIES, LLC dba ARSENIC	)	April 25, 2008
& APPLE PIE, a California Limited	)	9:00 a.m.
Liability Corporation and DOES 1 through	)	Judge Illston, Courtroom 10
20, inclusive,)	
	)	The Federal Building
Defendants.	)	450 Golden Gate Avenue
	)	San Francisco, CA 94102

And related Counter-Claim

Complaint filed: August 1, 2007

I, David Y. Wong, declare:

1. I am an attorney licensed by the State of California, admitted to practice before this
Court since 1982, and I am co-counsel for Defendants William Tull, Daniel Gibby and

MONTWILL V. TULL, ET AL. USDC Action No. C 07 3947 SI

Declaration of Wong – Opposition to Plaintiff's Motion for Summary Judgment

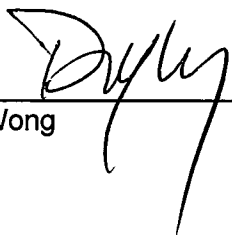
1 Gibby Novelties, LLC. I am authorized by my clients to make this Declaration in support of their
2 Motion for Summary Judgment, filed herewith.

3 2. On the afternoon of March 10, 2008, I attended the deposition of the Plaintiff, Paul
4 Montwillo, in this action. Mr. Montwillo was represented in his deposition by his attorney,
5 Stephen A. Sommers.

6 3. The Memorandum of Points and Authorities contains citations to deposition
7 testimony of Plaintiff Paul Montwillo. Attached hereto and incorporated by reference herein are
8 true and correct copies of the following deposition transcript pages, in full, wherein each of the
9 cited testimony excerpts may be found. The pages attached are arranged in numerical order,
10 as follows: Pages 27, 31, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 47, 48, 70, 91, 92,
11 93, 94, 95, 107, 108.
12

13 I certify under penalty of perjury under the laws of the United States of America that the
14 foregoing is true and correct, and that I am able to testify competently thereto.
15

16 Executed in Mill Valley, California on April 3, 2008.

17
18 
19 _____
20 David Y. Wong
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MONTWILLO DEPOSITION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PAUL MONTWILLO, an
individual,

Plaintiff,

vs.

WILLIAM TULL; DANIEL GIBBY; GIBBY
NOVELTIES, LLC dba ARSENIC & APPLE
PIE, a California Limited
Liability Corporation and DOES 1
through 20, inclusive,

Defendants.

No. C 07 3947 SI

Pages 1 thru 124

Volume I

Deposition of

PAUL MONTWILLO

March 10, 2008

Reported By:

JAN BROWN JONES # 4685

COPY

JAN BROWN & ASSOCIATES

CERTIFIED SHORTHAND REPORTERS

701 Battery St., 3rd Floor, San Francisco, California 94111

(415) 981-3498 or (800) 522-7096

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10:36 1 MR. WONG: It wasn't in the file.

13:40:36 2 MR. SOMMERS: And when I broke before I
13:40:40 3 was confusing this one with that one.

13:40:43 4 MR. GREENBERG: Okay.

13:40:44 5 Q. Do you know where you might have a copy of that?

13:40:47 6 A. I might have given it to my previous counsel. I
13:40:53 7 just gave him whatever I had, you know.

13:40:57 8 Q. Now, you indicated I believe in earlier testimony
13:41:00 9 that when Mr. Tull got out of the case you were
13:41:04 10 still in it for a period of time.

13:41:07 11 A. Yes, sir.

13:41:07 12 Q. Was it three months, six months, how long?

11:10 13 A. A year.

13:41:11 14 Q. I'm sorry?

13:41:11 15 A. A year.

13:41:12 16 Q. A year. So your settlement with Mattel was
13:41:17 17 sometime in 1998. Is that right?

13:41:19 18 A. It was actually -- I remember because I was leaving
13:41:22 19 to go home for Christmas. It was December of '97.

13:41:26 20 Q. And so you signed off and were done with Mattel by
13:41:29 21 December of '97. Is that right?

13:41:32 22 A. Yeah.

13:41:40 23 Q. In response to this lawsuit -- well, let me back
13:41:46 24 up. In March of '97, nine months or so before you
11:53 25 reached your settlement, were you in production,

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52:13 1 MR. GREENBERG: So I think we had a
13:52:14 2 question pending, did we?

13:52:16 3 THE WITNESS: Repeat the question,
13:52:18 4 please.

13:52:42 5 MR. GREENBERG: Yes, she's going to read
13:52:42 6 it back for you.

13:52:42 7
13:52:42 8 (Record read as requested.)

13:52:42 9
13:52:42 10 MR. GREENBERG:

13:52:42 11 Q. You indicated that you changed the body of the doll
13:52:44 12 so as to avoid further problems with Mattel. Is
52:47 13 that right?

13:52:47 14 A. That's correct.

13:52:48 15 Q. What change did you make?

13:52:50 16 A. I just used a different body.

13:52:53 17 Q. Did you create that body or did you find an
13:52:56 18 existing --

13:52:57 19 A. It was a doll.

13:52:58 20 Q. What was the source?

13:53:03 21 A. Toy stores, big lots, whatever.

13:53:07 22 Q. I see. So you either bought or found other dolls
13:53:12 23 to create the replacement dolls from?

13:53:19 24 A. Yeah.

13:21 25 Q. Did you actually -- well, let me back up. Let's

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13:56:51 1 responsibilities?

13:56:51 2 A. Uh-huh. Yes.

13:56:53 3 Q. And then it says that you will be primarily
13:56:56 4 responsible for art direction, design and
13:56:58 5 advertising of the product line.

13:57:01 6 Do you see that sentence?

13:57:02 7 A. Yes.

13:57:02 8 Q. What product line is referred to there?

13:57:06 9 A. Toys.

13:57:07 10 Q. Sorry?

13:57:07 11 A. Toys.

13:57:08 12 Q. What kind of toys?

13:57:10 13 A. Dolls.

13:57:12 14 Q. Dolls. Any others contemplated at this time?

13:57:18 15 A. Yeah, I think so. We were talking about watches
13:57:22 16 back then and -- yeah, I was designing some
13:57:26 17 watches. I don't remember what else, T-shirts.

13:57:33 18 Q. Okay. And were all of these products, this product
13:57:38 19 line referred to here, was this all the Trailer
13:57:41 20 Trash concept put into different products?

13:57:47 21 A. Yes.

13:57:49 22 Q. Okay. Just so you and I have an understanding when
13:57:53 23 we're referring to "product line," would it be fair
13:57:57 24 to say that it's the Trailer Trash product line?

13:57:59 25 A. Well, we did drag queens too.

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13:58:03 1 Q. Okay. So Trailer Trash and drag queens.

13:58:06 2 A. Yes; I mean, I designed 35 probably different
13:58:10 3 concepts reproduced many, many times. But yeah,
13:58:13 4 when I originally did this stuff, I was doing it in
13:58:17 5 my little studio in the back of my house, in the
13:58:20 6 back of my apartment. So I mean, no two were
13:58:24 7 exactly the same, nothing was identical.

13:58:28 8 Like, say, a Trailer Trash doll could be
13:58:30 9 wearing like the Daisy Duke shorts and that little
13:58:34 10 red halter top. Or she would be wearing a leather
13:58:39 11 jacket, you know. It just looked like whatever
13:58:42 12 clothes I could make or find or come up with that
13:58:45 13 looked like Trailer Trash, so --

13:58:48 14 Q. So if I understand you correctly, what you are
13:58:50 15 really talking about is that each doll you did was
13:58:56 16 essentially custom- and handmade. Is that true?

13:58:59 17 A. Yeah. Well, I don't know about custom.

13:59:01 18 MR. SOMMERS: Objection, because it's
13:59:02 19 vague as to time.

13:59:04 20 MR. GREENBERG: Sure. Just so you are
13:59:06 21 clear.

13:59:06 22 Q. I'm referring to the period of time here in 1997
13:59:11 23 prior to the December settlement with Mattel on
13:59:14 24 your part that you referred to, basically March to
13:59:18 25 December '97. So we're talking about a nine-month

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1 period here. And during that time I believe you
2 were talking about making individual dolls in your
3 studio and that each one was different. Is that
4 correct?

5 A. Well, I guess -- well, I wasn't making that many
6 anymore because I wasn't selling them at that time.
7 I was still making them and photographing them, but
8 they weren't for sale at that time.

9 Q. And the ones that had been for sale prior to that
10 time were the ones that used the Barbie body. Is
11 that correct?

12 A. Uh-huh. Yes, yes.

13 Q. So after March of '97 through December of '97,
14 while you continued to make some different designs,
15 you didn't offer any of those dolls for sale. Is
16 that right?

17 A. Not during that time period.

18 Q. Okay. And it goes on in discussing this in
19 Exhibit 2, the Partnership Agreement, third
20 paragraph, that your responsibilities would include
21 corporate ID, product design, package design,
22 website design and maintenance and print
23 advertising.

24 Is that your understanding of what your
25 responsibilities were?

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10:38 1 A. Uh-huh. Yeah, I was -- yeah.

14:00:45 2 Q. And then skipping down a paragraph to the fifth

14:00:50 3 paragraph on this page, it says, quote, "In return

14:00:53 4 for their efforts each party shall receive

14:00:55 5 50 percent of the net profits from the business,

14:00:58 6 after Mr. Tull has been returned his initial

14:01:01 7 investment plus interest at the current APR."

14:01:05 8 "APR" standing for annual percentage

14:01:07 9 rate. Is that right?

14:01:09 10 A. Yes.

14:01:09 11 Q. Is this an accurate statement of your understanding

14:01:13 12 of how the proceeds of your business with Mr. Tull

11:19 13 were going to be divided?

14:01:20 14 A. Yeah. That was very naive of me.

14:01:23 15 Q. Why do you say it was naive of you?

14:01:27 16 A. Well, nowadays, you know, I never would have signed

14:01:35 17 anything like that.

14:01:36 18 Q. Okay. And why is that?

14:01:37 19 A. I knew nothing about business.

14:01:40 20 Q. So you don't consider yourself to be savvy as a

14:01:45 21 businessman?

14:01:46 22 A. Yes, I agree with that statement.

14:01:49 23 Q. All right. And the last paragraph says, quote,

14:02:01 24 "This contract will remain in effect for two years

12:04 25 from date signed or until a limited liability

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1 corporation has been formed," close quote.

2 Was a limited liability corporation
3 formed within two years of July 1997?

4 A. I believe it was, yes.

5 Q. Okay. From July 1997 going forward, did you design
6 for manufacture a Trailer Trash doll product?

7 MR. SOMMERS: Objection, vague,
8 ambiguous.

9 THE WITNESS: It was previously designed.
10 I got a body from China and I just designed it --
11 that wasn't redesigned, it was the same as before.

12 MR. GREENBERG: Okay.

13 Q. So would it be fair to say that you got you said a
14 body from China and then incorporated the other
15 design elements that you had previously done using
16 a Barbie body?

17 A. Yeah.

18 Q. Okay. Who arranged to obtain the body from China?

19 A. Jeff Trojan was the man's name.

20 Q. What is his name?

21 A. Jeff Trojan.

22 Q. Okay. Do you know how to spell that last name?

23 A. Like the condom.

24 Q. Oh, Trojan. Okay. Jeff Trojan.

25 And where is Mr. Trojan these days?

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3:36 1 A. I have no idea. I have tried to contact him in the
14:03:39 2 past and he's disappeared.

14:03:42 3 Q. He lived in San Francisco at the time?

14:03:44 4 A. Los Angeles. The last I heard from him he was in
14:03:47 5 Los Angeles.

14:03:48 6 Q. And what was his involvement in getting the doll
14:03:51 7 body?

14:03:52 8 A. He was a contact to Hong Kong for us, or China,
14:03:58 9 wherever they are.

14:04:06 10 Q. Well, can you tell me, please, a little bit about
14:04:13 11 how the process of this manufacturing of dolls took
14:04:16 12 place using these bodies?

14:18 13 MR. SOMMERS: Calls for a narrative.

14:04:20 14 MR. GREENBERG: It does indeed.

14:04:25 15 THE WITNESS: So it was the same process,
14:04:27 16 like I would strip down a Barbie. Well, they gave
14:04:31 17 me a stripped down body, added the exact same
14:04:35 18 things, you know, darkened the roots, gave it a
14:04:38 19 cigarette, dressed it, you know, and sent it off to
14:04:41 20 them.

14:04:42 21 So then they would try and copy me. And
14:04:47 22 then they would send it back to me and I would say,
14:04:51 23 "No, you did this wrong, you did that wrong, modify
14:04:54 24 it." So back and forth like that.

14:57 25 MR. GREENBERG:

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14:57 1 Q. So what you were doing was, you were creating the
14:04:59 2 prototype and they would then attempt to make a
14:05:04 3 copy of that. You were testing back and forth to
14:05:07 4 make sure you got a final version that everyone was
14:05:10 5 satisfied with. Is that accurate?

14:05:13 6 A. Yeah. I was just trying to get them to accurately
14:05:16 7 copy my work, yeah.

14:05:17 8 Q. Once you had reached agreement, was it your
14:05:19 9 understanding that once you had reached an
14:05:20 10 agreement and you were satisfied with what they had
14:05:23 11 done, they would then go into mass production to
14:05:26 12 make a number of dolls?

14:05:27 13 A. Yes.

14:05:29 14 Q. Okay. And were they shipping finished packaged
14:05:32 15 dolls back or was packaging done here?

14:05:35 16 A. It was done there.

14:05:36 17 Q. It was done there. So you got basically boxes
14:05:40 18 filled with individual packaged boxes.

14:05:43 19 A. Yes. I had to design the packaging as well.

14:05:47 20 Q. And you designed the packaging as well.

14:05:50 21 A. Yes.

14:05:50 22 Q. Now, this is taking place -- is this taking place,
14:05:54 23 this process of going back and forth with -- was it
14:05:58 24 China?

14:05:59 25 A. China.

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1 5:59 1 Q. Was this taking place prior to December of 1997?

14:06:04 2 A. No.

14:06:06 3 Q. This took place after you had settled with Mattel?

14:06:09 4 A. That's correct.

14:06:11 5 Q. Was this taking place during the time the

14:06:14 6 partnership was in existence or was it during the

14:06:17 7 time the LLC was in existence or a little of both?

14:06:21 8 MR. SOMMERS: Objection, compound. Go

14:06:22 9 ahead.

14:06:25 10 THE WITNESS: I don't recall.

14:06:26 11 MR. GREENBERG: I understand.

14:06:28 12 THE WITNESS: I would guess it would be

1 6:30 13 after --

14:06:31 14 MR. SOMMERS: Don't guess.

14:06:32 15 MR. GREENBERG:

14:06:32 16 Q. What's your best recollection?

14:06:34 17 A. My best recollection would be after the initial

14:06:37 18 partnership agreement was signed.

14:06:39 19 Q. Okay. But before the LLC?

14:06:45 20 A. I think so. I'm not sure.

14:06:47 21 MR. SOMMERS: Don't guess.

14:06:48 22 MR. GREENBERG: I understand.

14:06:52 23 Q. With respect to this design process that you were

14:06:55 24 going through, the process with China and you

1 6:58 25 finally reached a design that you were satisfied

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14:07:01 1 with, what was your understanding of who owned that
14:07:03 2 design?

14:07:04 3 MR. SOMMERS: Objection, that the
14:07:06 4 question misstates the testimony that there was a
14:07:08 5 design process.

14:07:10 6 MR. GREENBERG: Well, I'll rephrase that,
14:07:12 7 Counsel. Thank you for the comment.

14:07:14 8 Q. With respect to this process you were going through
14:07:17 9 where you were shipping copies of the prototype
14:07:21 10 back and forth between you and China, as you put
14:07:24 11 it, to get them to get your design right, who owned
14:07:29 12 that final design that came out?

14:07:31 13 A. I do.

14:07:31 14 Q. "I do." You did?

14:07:33 15 A. Uh-huh.

14:07:34 16 Q. You were in partnership at the time or in an LLC
14:07:37 17 with Mr. Tull. Did Mr. Tull have any ownership
14:07:40 18 interest in this design?

14:07:43 19 A. No, he does not have ownership to my intellectual
14:07:46 20 property. I licensed the designs to the
14:07:52 21 corporation.

14:07:53 22 Q. You did. Let's talk about that.

14:08:00 23 MR. SOMMERS: Before you ask your
14:08:00 24 question, let me take a quick second.

14:08:04 25 MR. GREENBERG: Sure.

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1 8:05 1

14:08:05 2

(Off the record at 2:08 p.m and

14:08:09 3

back on the record at 2:13 p.m.)

14:10:47 4

14:13:42 5

MR. GREENBERG: Are you all set?

14:13:44 6

THE WITNESS: All set.

14:13:44 7

MR. GREENBERG: Back on the record.

14:13:49 8

Q. Mr. Montwillo, before our break you indicated that

14:13:51 9

you licensed your designs, I believe you said to

14:13:56 10

the corporation. I think in that respect were you

14:14:03 11

referring to the partnership and/or the LLC of

14:14:06 12

Arsenic & Apple Pie?

1 4:08 13

A. Yes.

14:14:09 14

Q. And when you say you "licensed your designs," was

14:14:16 15

this a written license?

14:14:19 16

A. No. I let the company use my work.

14:14:22 17

Q. Okay. When you indicate you let the company use

14:14:24 18

your work, is this what you mean by licensed?

14:14:31 19

A. Yes. I don't know like legal terms if this is --

14:14:39 20

you know. There was no written license.

14:14:44 21

Q. Okay. When you say you let the company use your

14:14:48 22

work or that you licensed it, I need to know from

14:14:53 23

you since there wasn't anything in writing, what

14:14:55 24

the terms of that license were; how long was the

1 4:58 25

license of the designs to run?

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1 15:08 1 A. As long as I was in the company.

14:15:11 2 Q. As long as you were in the company. Okay. And if

14:15:15 3 you left the company, was it your understanding

14:15:19 4 that you would be able to take your rights to the

14:15:24 5 design with you and that the company would no

14:15:27 6 longer be able to use those designs?

14:15:31 7 A. Yes.

14:15:32 8 Q. Okay. And was that irrespective of whether the

14:15:37 9 company at that point was profitable or was in

14:15:42 10 debt? In other words, when you left you left and

14:15:49 11 it didn't matter what the state of the company was

14:15:49 12 at the time?

1 5:49 13 MR. SOMMERS: Objection, compound. Go

14:15:49 14 ahead.

14:15:55 15 THE WITNESS: If I left --

14:15:56 16 MR. GREENBERG: Did you not understand

14:15:57 17 the question? Yes.

14:16:00 18 Q. If you left, what would happen in other words?

14:16:03 19 A. The company could no longer use my work.

14:16:06 20 Q. Okay. And if for example the company --

14:16:12 21 A. The company could purchase the rights to use my

14:16:14 22 work.

14:16:14 23 Q. Okay. Had you set a price on the rights at that

14:16:17 24 time?

1 6:18 25 A. We had discussed it.

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14:17:01 1 MR. SOMMERS: Objection, assumes facts
14:17:04 2 not in evidence.

14:17:05 3 MR. GREENBERG: That's why I am asking.

14:17:06 4 Q. Is that what you testified?

14:17:08 5 A. No.

14:17:08 6 Q. Let me ask you a different question. You say you
14:17:11 7 licensed your designs. Did you and Mr. Tull ever
14:17:14 8 sit down and have a discussion about the terms of
14:17:18 9 this license?

14:17:19 10 A. No. I don't think so, no.

14:17:23 11 Q. Did you discuss the terms of this license with
14:17:27 12 anyone else in the Arsenic & Apple Pie partnership?

14:17:32 13 A. No.

14:17:34 14 Q. Were the terms of this license only existing in
14:17:36 15 your own mind?

14:17:38 16 A. No. I specifically -- when we drew up the
14:17:44 17 operating agreement, I specifically made sure there
14:17:47 18 was no language that would deprive me of my
14:17:52 19 intellectual property.

14:17:54 20 Q. Well, that's not really my question.

14:17:56 21 A. Well then, yes, because it was discussed in the
14:17:58 22 drafting and I had some language removed.

14:18:03 23 Q. You had some language removed from the operating
14:18:06 24 agreement --

14:18:07 25 A. Right.

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18:07 1 Q. -- which you were concerned would affect a transfer
14:18:11 2 of your intellectual property rights. Is that what
14:18:15 3 you are saying?

14:18:15 4 A. Yes, that was my concern.

14:18:17 5 Q. All right. So in the Partnership Agreement that
14:18:24 6 we've been looking at, Exhibit 2, there isn't any
14:18:27 7 language regarding intellectual property rights, is
14:18:30 8 there?

14:18:31 9 A. No, that was just a preliminary agreement --

14:18:34 10 Q. Okay.

14:18:35 11 A. -- before the LLC.

14:18:37 12 MR. SOMMERS: Just answer the question
18:38 13 that is being asked. Keep it simple.

14:18:42 14 THE WITNESS: Okay.

14:18:42 15 MR. GREENBERG:

14:18:49 16 Q. Did the LLC operating agreement -- well, actually
14:18:53 17 hold on a second.

14:19:55 18 Mr. Montwillo, what language was removed
14:19:56 19 from the operating agreement that you were
14:19:59 20 concerned would have some impact on your
14:20:01 21 intellectual property rights?

14:20:03 22 A. I don't recall exactly.

14:20:05 23 Q. Okay.

14:20:06 24 A. I do recall it was there.

14:20:07 25 Q. You recall something was there?

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1 3:56 1 something.

14:53:58 2 Q. I'm sorry?

14:53:59 3 A. It's a sticker.

14:54:04 4 Q. Okay. Do you know what was there before?

14:54:07 5 A. I don't know what is under there.

14:54:11 6 Q. You don't know what is under it?

14:54:12 7 A. No.

14:54:13 8 Q. Was there a sticker on the first one regarding the

14:54:19 9 copyright date or is it printed on the box?

14:54:22 10 A. It's printed on the box.

14:54:23 11 Q. Okay. And you oversaw the production of these

14:54:26 12 boxes?

1 4:27 13 A. Yes.

14:54:29 14 Q. If you owned the copyrights to these designs, why

14:54:34 15 does the copyright notice say it's copyright

14:54:37 16 Arsenic & Apple Pie on both of these?

14:54:43 17 A. I don't know. I own the copyrights to the dolls.

14:54:57 18 Q. Okay. Now, from the 1997 partnership agreement

14:55:03 19 date, through to the dissolution of the LLC in

14:55:09 20 2004, am I correct that all costs for the design,

14:55:15 21 development, manufacture and distribution of the

14:55:23 22 dolls was paid for by Bill Tull?

14:55:23 23 A. Bill Tull made a loan to the company, yes.

14:55:26 24 Q. To cover those costs?

1 5:28 25 A. Yeah. So the company paid for them.

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15:31:46 1 MR. SOMMERS: Again, why don't you do it
15:31:47 2 that way, not that globally.

15:31:47 3 MR. GREENBERG:

15:31:48 4 Q. Other than the body --

15:31:49 5 A. Right.

15:31:51 6 Q. Well, let's back up. With respect to those three
15:31:53 7 dolls, Trailer Trash Doll, Blonde Drag Queen and
15:31:56 8 Red Head Drag Queen, you didn't design the body.
15:31:59 9 Is that correct?

15:32:01 10 A. That's correct.

15:32:03 11 Q. What did you design on those three dolls?

15:32:10 12 A. The clothing. The pants. The accessories.

15:32:21 13 Q. Okay.

15:32:22 14 MR. SOMMERS: Was there anything besides
15:32:23 15 the body that you didn't design?

15:32:26 16 THE WITNESS: The only thing I didn't
15:32:27 17 design was the body. We used standard bodies. I
15:32:30 18 designed everything else.

15:32:34 19 MR. GREENBERG:

15:32:34 20 Q. And taking a look at the box we've got here, which
15:32:40 21 we're not going to be able to attach to the record,
15:32:42 22 but I'll just represent -- and I think that we've
15:32:45 23 already concluded that this is one of the designs,
15:32:47 24 Trailer Trash Edition 1. Is that correct?

15:32:50 25 A. Yes.

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32:53 1 Q. This particular design features the model, the doll
15:33:01 2 in what looks to be a representation of blue jean
15:33:06 3 shorts. I believe you previously made reference to
15:33:11 4 these as "Daisy May" shorts?

15:33:13 5 A. Daisy Duke shorts.

15:33:16 6 Q. Daisy Duke shorts. And does that come from "The
15:33:19 7 Dukes of Hazard" television show?

15:33:22 8 A. Yes.

15:33:22 9 Q. The character of Daisy Duke? That's how you were
15:33:26 10 describing them.

15:33:27 11 A. There was a reference, yes.

15:33:33 12 Q. And the doll also is wearing a red and white
33:38 13 checked halter top. Is that how you would
15:33:42 14 characterize that garment?

15:33:46 15 A. Well, I guess halter top isn't correct, but --

15:33:49 16 Q. How would you describe it?

15:33:51 17 A. I can't remember the correct word for that.

15:33:54 18 Q. Is it a crop top?

15:33:55 19 A. Crop top maybe, something. I don't know. Skimpy,
15:33:59 20 skimpy thing on top.

15:34:02 21 Q. Right. And the hairdo of the doll is pig tails?

15:34:07 22 A. Yes.

15:34:08 23 Q. Pig tails and bangs?

15:34:11 24 A. And black roots, yes.

34:12 25 Q. And notably the black roots.

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34:15 1 A. And the cigarette, yes. And the blue eye shadow.

15:34:16 2 Q. Okay. Cigarettes, blue eye shadow.

15:34:23 3 Have you ever seen characters in
15:34:26 4 literature, movies or any other genre, where these
15:34:32 5 elements are incorporated to convey rural or poor
15:34:38 6 white individuals?

15:34:39 7 A. Well, that's what I was trying to convey; I mean,
15:34:42 8 it obviously stems from a stereotype.

15:34:48 9 Q. And these elements are elements of that stereotype,
15:34:52 10 right?

15:34:53 11 A. Yes.

15:34:53 12 Q. Would it be fair to say that with respect to the
34:56 13 Blonde Drag Queen and the Red Head Drag Queen, that
15:34:59 14 you attempted also to utilize similar genre
15:35:05 15 stereotypes to convey the impression of what the
15:35:08 16 doll was?

15:35:09 17 MR. SOMMERS: Objection, horribly vague.
15:35:11 18 Horribly, horribly vague.

15:35:16 19 THE WITNESS: No.

15:35:17 20 MR. GREENBERG: Okay.

15:35:19 21 Q. With respect to the Blonde Drag Queen, what
15:35:23 22 elements did you add to that design?

15:35:28 23 A. Everything but the body.

15:35:30 24 Q. And what were those elements; what is the
15:32 25 everything?

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15:35:35 1 A. Dress, purse, hair, makeup. Everything.

15:35:42 2 Packaging. Whatever.

15:35:46 3 Q. And how would it be that someone looking at that

15:35:50 4 doll would know that it was supposed to be a drag

15:35:53 5 queen as opposed to an actual female?

15:36:05 6 A. It has a male body. It's exaggerated makeup. It's

15:36:16 7 a drag queen.

15:36:19 8 Q. From your expression --

15:36:21 9 A. I'm like, what? It's a drag queen.

15:36:24 10 Q. Right. My sense is that the elements that you

15:36:26 11 incorporated were so clear that anyone looking at

15:36:29 12 it would know it was a drag queen. Is that right?

15:36:32 13 A. That's correct.

15:36:33 14 Q. And in order for that to happen, people looking at

15:36:38 15 this have to have a stereotype in mind of what a

15:36:42 16 drag queen is. Isn't that also true?

15:36:45 17 MR. SOMMERS: Objection, argumentative.

15:36:46 18 THE WITNESS: No.

15:36:47 19 MR. GREENBERG: No?

15:36:47 20 THE WITNESS: No.

15:36:48 21 MR. SOMMERS: Calls for opinion.

15:36:53 22 MR. GREENBERG: Okay.

15:36:59 23 Q. How would you characterize the hair on the Blonde

15:37:01 24 Drag Queen?

15:37:02 25 MR. SOMMERS: Objection, vague.

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MR. GREENBERG:

Q. Well, what choice did you make as to what the hair should be for the Blonde Drag Queen?

MR. SOMMERS: Objection, vague. Go ahead.

THE WITNESS: I chose long blonde hair.

MR. GREENBERG:

Q. Why?

A. I knew I was going to do a white dress. So a lot of drag queens like to do Marilyn, so I put the blonde in a white dress.

Q. Sort of to evoke the drag queen version of Marilyn?

A. Yes.

Q. Was the Red Head Drag Queen evocative of any celebrity?

A. Brian O'Rourke.

Q. And who is that?

A. A friend of mine.

Q. And does Brian O'Rourke on occasion attire himself as a drag queen?

A. Yes.

Q. So this was designed to look like him?

A. Yes.

Q. Did you get a license from him?

A. No. No, I did not. I believe he has the original

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01:44 1 Q. Going back to Exhibit 4, July 13, 2004, this is
16:01:49 2 your letter to Mr. Wong. You state in the third
16:01:56 3 paragraph, "I hold the copyrights to all my
16:01:59 4 designs, not the company." We've gone over that
16:02:01 5 once or twice before.

16:02:04 6 Was it your understanding, Mr. Montwillo,
16:02:08 7 that as of July 13, 2004, Arsenic & Apple Pie
16:02:16 8 intended to continue to sell the dolls that you
16:02:22 9 claim you held the copyrights to?

16:02:24 10 A. That was a response. I don't recall the letter it
16:02:28 11 was in response to. I was addressing a letter I
16:02:30 12 received from Mr. Wong.

02:32 13 Q. Okay. After July 13, 2004, was it your
16:02:36 14 understanding that Arsenic & Apple Pie continued to
16:02:38 15 sell the designs -- the dolls that embodied the
16:02:43 16 designs you claim to own?

16:02:45 17 A. Yes.

16:02:53 18 Q. Did you prior to the filing of the copyright
16:02:56 19 infringement lawsuit in this case, ever send notice
16:03:01 20 to Arsenic & Apple Pie that you believed that they
16:03:05 21 were violating your copyright?

16:03:09 22 A. You are looking at it.

16:03:11 23 Q. Okay. So in your view this letter of July 13,
16:03:14 24 2004, was you sending notice to them that they were
03:18 25 violating your copyright?

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03:19 1 A. Yes.

16:03:23 2 MR. SOMMERS: I'll object to the extent
16:03:25 3 that that requests a legal conclusion.

16:03:38 4 MR. GREENBERG:

16:03:43 5 Q. Mr. Montwillo, your counsel filed on your behalf
16:03:46 6 what are referred to by lawyers as initial
16:03:52 7 disclosures, and those initial disclosures include
16:03:56 8 lists of witnesses and other elements in the case.
16:03:59 9 I need to find out who some of these people are, so
16:04:03 10 I'm going to ask you some questions about that.

16:04:05 11 I'm not asking you about any of the legal
16:04:07 12 conclusions, if any there are in this disclosure,
04:10 13 but I need to find out who these people are. All
16:04:13 14 right?

16:04:14 15 A. Okay.

16:04:14 16 Q. Can you tell me, please, who Eloise Clark is?

16:04:20 17 A. No. Eloise Clark?

16:04:23 18 Q. E-L-O-I-S-E Clark it says will testify that Gibby
16:04:28 19 Novelties, LLC sold the copyrighted dolls. Do you
16:04:32 20 know who that person is?

16:04:34 21 MR. SOMMERS: I think she's the
16:04:35 22 accountant or bookkeeper for Gibby Novelties.

16:04:40 23 MR. GREENBERG:

16:04:41 24 Q. Would it be fair to say you don't know who that
16:04:43 25 person is?